



Closing Argument

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Closing Argument

- Apply the facts to the law
- Eliminate confusion
- Demonstrate why the defendant is guilty

Closing Argument

OUTLINE

- **Theme**
- **Theory of your case**— narrative
- **Elements of offenses**
 - ID and eliminate uncontested issues / not in dispute
 - Describe what is contested—focus on these
- *Portillo* Instruction – “Firmly Convinced”
- **Review** disputed evidence
- **Theme** – “call to action”

Closing Argument

- THEME
- What did the defendant do to deserve punishment? (theory)
 - Get it out on the table right away—mirror your opening.
- If you have a hook—use it, but you don't need to be clever or catchy.

Closing Argument

STORY / NARRATION (THEORY):

- What story do you tell?
- What do you need to translate to the jury? Describe what happened – what did witnesses see/hear/smell/feel?
- Use quotes
- Use photos
- Incorporate elements of offense(s)

Closing Argument

STORY / NARRATION

- As you narrate, review the elements of each offense.
- Review jury instructions as needed.
- Which elements ARE NOT IN DISPUTE?
- Which elements ARE IN DISPUTE?
- Help the jury focus—eliminate confusion

Telling the Story / Narration

- Don't just repeat what witnesses told the jury.
- Emphasize elements of offenses which are not in dispute
- *Example: In APC case, usually no dispute as to the fact that D was impaired or over 0.08. Focus is on whether D was driving.*

Closing Argument - Example

- ***Molestation of a Child – A.R.S. § 13-1410***
 - Intentionally or knowingly
 - Engaging in or causing a person to engage in
 - Sexual contact (except female breast)
 - With a child under 15 years of age
 - Per Domestic Violence

Closing Argument - Example

- Defense-
 - Child was confused with innocent touching – “horseplay” or bathing occurring 20 years prior
 - Victim is lying
 - Victim had recanted twice to LE over the years

Closing Argument - Example

- FACTS NOT IN DISPUTE
 - Victim under 15 at time of offenses
 - DV relationship established
 - Other facts confirmed (where lived, when, etc.)

Closing Argument - Example

- **FACTS IN DISPUTE**
 - Intentionally or knowingly
 - Engaging in or causing a person to engage in
 - Sexual contact (except female breast)



Closing Argument - Example

Every family has secrets –
but they can't remain in the dark forever

Telling the Story / Narration

- Use quotes from trial testimony:

Defendant: I didn't ...no...I didn't go out to hurt you I didn't do it because you were my stepdaughter or anything like that. That's not...that had nothing to do with it.

- *Quote from body wire confrontation by victim
8/11/2004*

Telling the Story Narration

- Use quotes from trial testimony:

“Well, it’s never happened again in my life. I swear to God...”

- *Quote from body wire confrontation by victim
8/11/2004*

Telling the Story / Narration

- Use quotes from trial testimony:

“I don’t know, it was a sick thing I did and I can’t tell you, you know, you got...the mind is a crazy thing and I’m a smart person....”

- *Quote from body wire confrontation by victim
8/11/2004*

Telling the Story / Narration

- Use quotes from trial testimony:

Victim: “That’s why I don’t understand why you did it.”

Defendant: “And, uh, it’s the sickest thing I’ve ever done in my life and I hate myself for it...”

- *Quote from body wire confrontation by victim
8/11/2004*

Closing Argument- Jury Instructions

Proof beyond a reasonable doubt is proof that leaves you **firmly convinced** of the defendant's guilt. **There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt.** If, based on your consideration of the evidence, you are **firmly convinced** that the defendant is guilty of the crime charged, you must find him/her guilty. If, on the other hand, you think there is a real possibility that he/she is not guilty, you must give him/her the benefit of the doubt and find him/her not guilty.

State v. Portillo, 182 Ariz. 592, 596, 898 P.2d 970, 974 (1995).

Jury Instructions

- Review important jury instructions.
- Which ones are most important?
 - Direct vs. Circumstantial Evidence
 - Credibility of Witnesses
 - Presumptions of Intoxication

Make a List!

- Apply your theme to disputed elements
- LIST every fact that proves your side of the disputed elements
 - “There are five reasons why you should be firmly convinced that the D’s BAC was over .08”
 - “There are ten pieces of evidence that show why you should be firmly convinced the D molested the victim as alleged by the State.”
- Remember the totality of the circumstances?

Close Strong

- Theme & Call to Action
- Tell the jury what you want them to do.
- Prepare something ahead of time!

“Find the defendant guilty on all counts. The facts lead you to his guilt. The evidence proves it, and justice demands it.”

Rebuttal Close

- Theme – “this case is about”
- This case IS NOT about ____ or ____.”
- State and OWN our burden.
- Explain why D’s “doubt” isn’t reasonable.
 - Crush them by reviewing every piece of evidence that contradicts their defense / arguments and show why it is unreasonable to believe the D.
 - Refer jurors back to instructions.
 - Theme and call to action.
 - Don’t chase the D’s arguments – reinforce your own.

Rebuttal Close

“ D wants you to believe his BAC is inaccurate because of possible errors with the Intoxilyzer. However, here is all the evidence you have before you that shows it was working properly on the night of his test.”

- Make a list!

Things Not to Do

- **Stating Your Opinion-** “ I believe the evidence has shown the D has to be a liar”
- **Commenting** on facts not in evidence.
- **Vouching** – “You have to believe the Officer Smith because he is a a sworn law enforcement officer.”
- **Hyperbolic descriptions** of the D – “The D committed a horrible crime—he is an evil person and must be punished.”
- **Personal attacks on defense counsel** – “he lied to you throughout the trial.”
- **Commenting on D’s right to silence** – “If D had nothing to hide, he would have answered the officer’s questions. He would have testified today.”

Helpful Tips

- Watch other people's trial closings
- Prepare both closings ahead of time—you can always adapt
- Use visual aids—PP, Prezi, flip chart, white board, etc.
 - Assume you will have to make last minute changes to PP/Prezi
 - Give copy to defense counsel ahead of time
- Take your time, but don't drag it out.

Questions?

